

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

	:	
Brian Lanouette,	:	Civil Action No.: 1:14-cv-00179
Plaintiff,	:	
vs.	:	<u>AMENDED COMPLAINT</u>
Kay Jewelers a/k/a Sterling Inc.,	:	
Defendant.	:	
	:	

For this Amended Complaint, Plaintiff, Brian Lanouette, through his attorneys, alleges the following against Defendant, Kay Jewelers a/k/a Sterling Inc.:

INTRODUCTION

1. Count I of Plaintiff's Amended Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA").

PARTIES

2. Plaintiff is a natural person residing in Salem, Rockingham County, New Hampshire.
3. Defendant is a business entity with an office located at 375 Ghent Road, Akron, Ohio 44333.
4. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

JURISDICTION AND VENUE

5. Jurisdiction of this court arises pursuant to 28 U.S.C. § 1331.
6. Defendant conducts business in the State of New Hampshire thereby establishing personal jurisdiction.
7. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

FACTUAL ALLEGATIONS

8. Prior to the filing of this action, Plaintiff purchased some jewelry from Defendant, which is financed with installment payments to Defendant.
9. In or around December of 2013, Defendant started placing telephone calls to Plaintiff on his cellular telephone line, telephone number (603) 521-51xx, attempting to collect the alleged balance that remained for the jewelry.
10. Defendant has been assigned multiple telephone numbers from its telephone provider(s) which it used to place the telephone calls to Plaintiff including, but not limited to, 310-203-9289, 310-203-9693, 215-464-8137, 305-682-8706, 407-299-5355 and 419-693-9261.
11. All of Defendant's telephone calls to Plaintiff were placed using an automatic telephone dialing system or other equipment capable of storing telephone numbers and dialing at random or sequential time intervals ("robocalls").
12. In February of 2014, Plaintiff answered Defendant's telephone call and instructed Defendant to stop calling his cellular telephone.
13. Defendant told Plaintiff that it would continue despite his instructions.
14. Plaintiff's instruction to Defendant revoked any actual or implied authorization to call his cellular telephone.

15. Despite Plaintiff's instruction, Defendant continued to place robocalls to Plaintiff on his cellular telephone.

16. Defendant's calls to Plaintiff's cellular telephone include, but are not limited to, the following:

- 1) 3/16/2014 1:09 PM
- 2) 3/17/2014 11:19 AM
- 3) 3/17/2014 1:09 PM
- 4) 3/16/2014 1:22 PM
- 5) 3/17/2014 3:55 PM
- 6) 3/17/2014 3:55 PM
- 7) 3/17/2014 5:02 PM
- 8) 3/17/2014 5:06 PM
- 9) 3/17/2014 5:06 PM
- 10) 3/17/2014 7:03 PM
- 11) 3/17/2014 8:36 PM
- 12) 3/18/2014 10:37 AM
- 13) 3/18/2014 4:33 PM
- 14) 3/19/2014 12:25 PM
- 15) 3/19/2014 2:27 PM
- 16) 3/19/2014 2:30 PM
- 17) 3/19/2014 3:37 PM
- 18) 3/20/2014 8:26 AM
- 19) 3/20/2014 8:27 AM
- 20) 3/20/2014 12:46 PM
- 21) 3/20/2014 2:17 PM
- 22) 3/20/2014 2:20 PM
- 23) 3/21/2014 8:20 AM
- 24) 3/21/2014 12:39 PM
- 25) 3/21/2014 5:33 PM
- 26) 3/21/2014 5:35 PM
- 27) 3/22/2014 12:46 PM
- 28) 3/22/2014 1:34 PM
- 29) 3/22/2014 1:46 PM
- 30) 3/22/2014 1:50 PM
- 31) 3/23/2014 12:30 PM
- 32) 3/24/2014 8:34 AM
- 33) 3/24/2014 5:49 PM
- 34) 3/24/2014 5:51 PM
- 35) 3/25/2014 1:11 PM
- 36) 3/25/2014 1:15 PM
- 37) 3/25/2014 1:29 PM
- 38) 3/25/2014 4:57 PM

39) 3/25/2014 5:00 PM
40) 3/26/2014 2:15 PM
41) 3/26/2014 2:19 PM
42) 3/26/2014 4:46 PM
43) 3/26/2014 4:49 PM
44) 3/27/2014 11:27 AM
45) 3/27/2014 11:28 AM
46) 3/27/2014 1:04 PM
47) 3/27/2014 1:06 PM
48) 3/27/2014 1:50 PM
49) 3/27/2014 1:55 PM
50) 3/27/2014 6:54 PM
51) 3/27/2014 6:56 PM
52) 3/28/2014 9:39 AM
53) 3/28/2014 9:42 AM
54) 3/28/2014 10:25 AM
55) 3/28/2014 10:28 AM
56) 3/28/2014 11:13 AM
57) 3/29/2014 12:03 PM
58) 3/29/2014 12:54 PM
59) 3/29/2014 1:27 PM
60) 3/29/2014 1:35 PM
61) 3/30/2014 12:34 PM
62) 3/30/2014 2:57 PM
63) 3/30/2014 2:58 PM
64) 3/31/2014 12:13 PM
65) 3/31/2014 1:44 PM
66) 3/31/2014 1:48 PM
67) 3/31/2014 4:48 PM
68) 3/31/2014 5:54 PM
69) 3/31/2014 7:01 PM
70) 3/31/2014 8:25 PM
71) 4/1/2014 1:55 PM
72) 4/1/2014 2:01 PM
73) 4/1/2014 2:04 PM
74) 4/2/2014 11:26 AM
75) 4/2/2014 11:29 AM
76) 4/2/2014 11:57 AM
77) 4/2/2014 12:06 PM
78) 4/2/2014 12:08 PM
79) 4/2/2014 12:33 PM
80) 4/3/2014 10:00 AM
81) 4/3/2014 10:04 AM
82) 4/3/2014 10:42 AM
83) 4/3/2014 11:08 AM
84) 4/4/2014 9:45 AM

85) 4/4/2014 9:47 AM
86) 4/4/2014 4:04 PM
87) 4/4/2014 4:07 PM
88) 4/5/2014 11:46 AM
89) 4/5/2014 1:11 PM
90) 4/5/2014 1:15 PM
91) 4/6/2014 2:50 PM
92) 4/6/2014 3:00 PM
93) 4/7/2014 8:07 AM
94) 4/7/2014 8:13 AM
95) 4/7/2014 11:09 AM
96) 4/7/2014 11:15 AM
97) 4/7/2014 6:32 PM
98) 4/7/2014 6:35 PM
99) 4/8/2014 11:14 AM
100) 4/8/2014 11:31 AM
101) 4/8/2014 11:37 AM
102) 4/8/2014 12:27 PM
103) 4/9/2014 8:58 AM
104) 4/9/2014 8:10 PM
105) 4/9/2014 8:12 PM
106) 4/10/2014 10:35 AM
107) 4/10/2014 10:36 AM
108) 4/10/2014 10:52 AM
109) 4/10/2014 12:59 PM
110) 4/10/2014 12:59 PM
111) 4/11/2014 9:13 AM
112) 4/11/2014 9:16 AM
113) 4/11/2014 10:47 AM
114) 4/11/2014 10:49 AM
115) 4/11/2014 11:16 AM
116) 4/11/2014 11:27 AM
117) 4/11/2014 5:23 PM
118) 4/12/2014 1:44 PM
119) 4/12/2014 3:52 PM
120) 4/12/2014 3:57 PM
121) 4/13/2014 2:48 PM
122) 4/13/2014 6:21 PM
123) 4/13/2014 6:25 PM
124) 4/14/2014 8:06 AM
125) 4/14/2014 8:09 AM
126) 4/14/2014 10:42 AM
127) 4/14/2014 11:07 AM
128) 4/14/2014 11:12 AM
129) 4/15/2014 1:38 PM
130) 4/16/2014 6:19 AM

131) 4/16/2014 7:11 AM
132) 4/16/2014 11:26 AM
133) 4/16/2014 1:07 PM
134) 4/16/2014 4:14 PM
135) 4/17/2014 9:30 AM
136) 4/18/2014 8:46 AM
137) 4/18/2014 11:36 AM
138) 4/19/2014 8:39 AM
139) 4/19/2014 8:43 AM
140) 4/19/2014 12:23 PM
141) 4/21/2014 6:36 AM
142) 4/21/2014 6:44 AM
143) 4/21/2014 7:50 AM
144) 4/21/2014 4:46 PM
145) 4/21/2014 4:50 PM
146) 4/22/2014 4:12 AM
147) 4/22/2014 4:14 AM
148) 4/22/2014 7:18 AM
149) 4/22/2014 12:00 PM

17. Defendant did not have Plaintiff's consent to call his cellular telephone.

18. Plaintiff feels harassed by Defendant's continued robocalls.

COUNT I
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

19. Defendant's actions alleged *supra* constitute numerous negligent violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

20. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violations of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

21. Statutory damages of \$500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B),
22. Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C),
23. All court costs, witness fees and other fees incurred,
24. Any other relief that this Honorable Court deems appropriate.

DATED: June 2, 2014

Respectfully submitted,

By: /s/Rosanna T. Fox

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